NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD ALBERT WILLIS,	)	No. 07-15893
	)	
Petitioner-Appellee,	)	D.C. No. CV-05-03153-MHP
	)	
v.	)	**MEMORANDUM**[*]
	)	
A. P. KANE, Warden,	)	
	)	
Respondent-Appellant.	)	
	)	

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted November 8, 2007[**]
San Francisco, California

Before: FERNANDEZ and McKEOWN, Circuit Judges, and KORMAN,[***] District Judge.

A. P. Kane, Warden at the Correctional Training Facility at Soledad,

[*]This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**]The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

[***]The Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, sitting by designation.

California, appeals the district court's grant of Ronald Albert Willis's petition for habeas corpus relief. See 28 U.S.C. § 2254. We reverse.

The district court erred when it granted the petition and issued the writ on the basis that when the California Board of Prison Terms denied Willis parole, it violated Willis's due process rights under the United States Constitution. See Bd. of Pardons v. Allen, 482 U.S. 369, 375–76, 107 S. Ct. 2415, 2419, 96 L. Ed. 2d 303 (1987); Sass v. Cal. Bd. of Prison Terms, 461 F.3d 1123, 1127–28 (9th Cir. 2006). In deciding the issue before us, we follow our prior cases, which have held that to meet the due process standard there must be some evidence to support the decision to deny parole. See Irons v. Carey, No. 05–15275, slip op. 8335, 8344 (9th Cir. July 13, 2007); Sass, 461 F.3d at 1128–29; Biggs v. Terhune, 334 F.3d 910, 915 (9th Cir. 2003); Jancsek v. Or. Bd. of Parole, 833 F.2d 1389, 1390 (9th Cir. 1987); see also McQuillion v. Duncan, 306 F.3d 895, 904 (9th Cir. 2002).[1] Here there certainly was some evidence.

While there may be some cases where the facts and circumstances of the murder have ceased to supply "some evidence" that the defendant remains a

[1]Kane argues that clearly established Supreme Court law does not require that there be some evidence. But we are in no position to overturn our prior cases. See United States v. Gay, 967 F.2d 322, 327 (9th Cir. 1992).

danger,[2] this is not one of them. Willis's brutal beating of his 19-month-old daughter over a period of two days, his failure to seek medical help when her behavior and illness showed the severe effects of those beatings, and his ultimate discarding of her body in a dumpster bespeak a viciousness, callousness and indifference to innocent human life that can be seen as some evidence of a continuing danger to the safety of the public.[3] Of course, it is not our task to balance the evidence and determine whether we agree with the ultimate decision. See Sass, 461 F.3d at 1128. Our task is simply to decide whether some evidence exists; here it does.

REVERSED.

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[2]See Irons, slip op. at 8349; Biggs, 334 F.3d at 917; see also In re Rosenkrantz, 29 Cal. 4th 616, 682–83, 59 P.3d 174, 222, 128 Cal. Rptr. 2d 104, 161 (2002); cf. Sass, 461 F.3d at 1129 (stating that courts should not speculate about future cases).

[3]If more were needed, Willis's failure to continue with AA activities in prison is some additional evidence that he does not quite understand his need for that sort of support before he leaves prison and enters what will undoubtedly be a stressful world for him.